Instructions to Records.

G. R. S. 59] For purposes of preservation this filed collection will be regarded as a B collection. [Rejection order 97-3-04

GENERAL AND REVENUE SECRETARIAT.

1904-05
(Courts.)

File No. 18.

Serial Nos. 164.

Papers Filed.

Month March 1906.

Belong to August 1904.

SUBJECT.

Institution of Mr. Thyagaraja Iyer with the Pronouja Telain magistrate.

PREVIOUS REFERENCES.	LATER REFERENCES.
	bls 167 of 08 & bls 102 B MM 08.

G.R.S. 11] 1904.

GENERAL AND REVENUE SECRETARIAT.

(Courts.)

NOTES.

File No. 18/04-05

FILE HEADING.

Investiture of Mr. V. N. Iyengaraya Iyer, Asst. Commissioner, with powers.

From

The District Magistrate, Kolar.

No. C 81. Dated 16th July 04 Received 18th July 04.

Diary No. J 155	Enclos. —	Spare Copies. —	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Requests that Govt. may be pleased to invest Mr. V. N. Iyengaraya Iyer Asst. Commissioner with the powers of a Magistrate of the 1st Class.

NOTES AND ORDERS.

J

DRS 5-8-04

Deputy Secretary's remarks 19/7/04.

This should have been sent thro' the Chief Court but as the District Magistrate asks for early orders and as there seems to be no doubt about Mr. Iyengaraya's

NOTES—First sheet.

MGCPB—5,000—18-5-04

General and Revenue Secretariat.

File No. 18 of 1904 05.

Serial No.

Competence to exercise 1st class powers
put up a draft notification investing
him therewith".

Ltd with a draft. Mr. Ayyaraja Iyer was
appointed a Magistrate of the 3d class
on 26th March 1896.-

25/7/04 25-7-04

Lay before the Hon'ble Council
&
25/7/1904

I would deal with this officer's
case in the same way as we did
with that of Mr C. Rama Rao. If I
am not mistaken, the Chief Court
was consulted before we invested
Mr C. Rama Rao with 1st Class
Powers - I would adopt a
similar procedure in Mr Thyagaraja
Iyer's case: I have myself no
doubt - as to Mr Thyagaraja Iyer's
fitness for the Powers proposed, but
I would not pass orders without

154/25-7-04

Note—Contn. sheet.

MGCPB—10 000—19-5-04

General and Revenue Secretariat.

File No. 18 of. 1904-05

Serial No.

Reference to the Chief Court ~~which~~ which ~~to~~ to avoid delay, may either be addressed officially or unofficially to be consulted all the need for a 1st class Magistrate at Kolar is urgent —

26/7/04.

The recommendation ought to have come thro' the Chief Court; but as it has come direct. Shall we return it for transmission thro' the proper channel or give him 2nd class powers, as he is now 3rd class Magistrate.

Submitted to the Dewan Saheb for orders

26-7-1904.

But the query as to whether he has exercised second class powers and thereafter the papers to be submitted through the Chief Court — How long did Nyapa Nayak exercise 2nd class Magisterial powers? In Ramachar case the powers were given without any recommendation from any one.

28.VII.04

Branch III
Kindly speak about it & send the papers early

30/7/1904

30/7/04 Dewan

NOTE—Contn. sheet.

MGCPB—10 000—19-5-04

General and Revenue Secretariat.

File No. 18 of 1904-05

Serial No.

Secretary's remarks:—

'Kindly Draft accordingly & Send me back'

Draft Sub'd

30/7/04 30-7-04 30/7/04

2 To the District Magistrate, Kolar,

No. 270 dated the 2nd August 1904.

Returns the letter for Submission through the Chief Court and enquires whether Mr. Dyngaraja Iyer ever exercised 2nd Class magisterial powers and how long he exercised 3rd Class powers.

3. From the Registrar of the Chief Court of Mysore No. 1001/68 dated the 12th August 1904.

States that the District Magistrate, Kolar, reports that Mr Dyngaraja Iyer has not exercised 2nd Class magisterial powers but that he is competent to exercise the powers of a magistrate of the 1st class & recommends the conferment of Mr. Dyngaraja Iyer with the latter powers. Submitted with draft

Record in B 23-8-04

16/8/04 16-8-04

MGCPB—10,000—19-5-04

General and Revenue Secretariat.

File No. 18 of 1904-05

Serial No.

The foll. replies to the Dewan's queries of 25-7-04 are submitted :-

1) Mr Rajagopalier has not exercised 2d class powers.

2) He exercised 3d class powers from the end of March 1896 to the beginning of Dec.r of the same year, when he entered the Secretariat.

Draft investing him with 1st-class powers as recommended by the Dist.t Magte and the Chief Court, is subd for appl.

16/8/04

To Dewan thro' 1st-Cr

334
16-8-04.

The recommendation may be sanctioned. Draft submitted.

17-8-04

Submitted to the Dewan Saheb. He exercised 3d class for only 8 months. Never was a 2d class Magte. May be very fit, but before entrusting 1st class powers at once may not we try him

G.R.S. 12]

General and Revenue Secretariat.

File No. 18 of 1904-05

Serial No.

as a 2d class Magt for at least 6 months as usual?
19. 8. 1904

1050/18.8.04. As a special case he may be given 1st class powers
19. VIII-04 (illegible)

4. Notification No 3517, dt 23-8-04,
Invests Rai Bahadur Jogendra Nath Sen with Select Magistrates powers.

Endorsement to the Chief Court-Rejection, No 3518, dt 23-8-04.
Forwards a copy of the notification

NOTE—Contn. sheet.

MGCPB—10 000—19-5-04

G.R.S. 12]

General and Revenue Secretariat.

File No. 18 of 1904-05.

Serial No.

This file has been sent to me for information after the order was passed. I find in the file another instance of the Secy recording a note of his own views after it had been passed and during transit. The note is virtually a direction to the Dewan that it should be overruled. I do not think the Secy was in order in making it. The procedure is novel and does not appear to me to be free from objection. (The Secy's opinion given in my time is most welcome. After a matter has been submitted to the Dewan through the Councillor in charge, the Secy ceases to have the right of noting on it — except when further information is called for. To his asking me to reconsider my opinion on the ground that he had not an earlier opportunity of expressing his opinion or on any other ground I have certainly no objection but to his going up to the Dewan direct with his

NOTE—Contn. sheet.

MGCPB—10 000—19-5-04

General and Revenue Secretariat.

File No. 18 of 1904-05.

Serial No.

own views elaborated & minute already recorded, I think there are grave objections. If the Secy is unable to agree with me, may I ask him to place this before the Dewan who I hope to be kind enough with his valuable instructions?

30/8/04.

Submitted to the Dewan Saheb. As the file was perusing for the first time, having been sent by the Secy direct to the Dewan, I submitted any figures without any intention to add to or in any way to interfere with any other record.

31.8.1904

Done 31/8

13555 3-9-04

I find it very difficult to answer this question. Strictly under the rule volume is required - but it will certainly be convenient if the Secy forms his opinion upon the Committee gets the papers or at all events acquaints him with his opinion

Serial No.

the matter finally reaches the Dewan — This is the proper course as without such full powers the Secretary's proposal will not be understood the Councillor cannot suggest a modification of the method of disposal proposed —" The objection taken by the Councillor has force

J. 1st Councillor 4.X.04

Dewan 6.10.1904

Then the Dy. Secy. will have to send all his papers there as. If not, they will come to me after they have passed thro' the councillor

6.10.1904

* I am in doubt as to whether the above is intended as an instruction to me for guidance. If it is, I would respectfully point out that the rule of direct submission of papers by the Deputy Secretary to the Dewan & Councillors is one sanctioned by the Government in Order No. P. 5218-57 J/14-4-04, and embodied in express terms in para 318 of the Office Manual the provisions of which cannot be varied without an express order of Govt. My object in writing this is merely to draw attention to a fact bearing on the change of procedure suggested

NOTE—Contn. sheet.

MGCPB—10,000—21-8-04.

General and Revenue Secretariat.

File No. 18 of 1906-05.

Serial No.

and not to express an opinion as to whether the necessity therefor exists. I shall submit my opinion ~~if~~ when it is asked for.

7-10-04

To Sec.[4]

The Dewan Saheb's orders are that I should record my opinion before the files reach the Councillors. To do so the files have to come first. If not how can I do as above directed?

The Sec: ~~to~~ of the manual (318) referred to says that you may send some papers direct. It is permissive, but not mandatory. As I have to record my opinion before the files go on / as ordered by the Dewan Saheb ~~the record~~ on above course has, I think, to be adopted & the doing does not militate against the rule alluded to.

7-10-1904

Subd to 78-C[r]

7.10.04

783
7-10-04

The Rule (article 318 of the manual)

NOTE—Contn. sheet.

MGCPB—10 000—19-5-04

General and Revenue Secretariat. | File No. 18 of 1906-05

Serial No.

I did not presume to venture any views, but the Dewan Saheb was pleased to order me to submit them
P.K.K.
9.6.1905

Quite clear & I believe no change of it is either intended or is desirable. It is a question whether it is really necessary that the Secy should have his say in such matters. My own opinion is that there is no such necessity. Nor do I quite understand the present procedure by the Dy Secy & under which papers submitted to the Dewan thro' the Councillor in charge, [illegible] go to the Dewan through the Secy after they are dealt with by the Councillor. This procedure should in my humble opinion be discontinued. If before the issue of orders in accordance with the views of the Councillor in charge [illegible] concurred in by the Dewan, the Secy has, after the receipt of the papers from the Dewan, anything to say by way of a suggestion for reconsideration he is quite welcome

NOTE—Contn. sheet.

MGCPB—10,000—31-8-04.

General and Revenue Secretariat. | File No. 18 of 1904-05

Serial No.

Lay it on the district under Klondyke that his views go up to the Dewan thro' the Councillor - I am not gaining unnecessary difficulties but I am anxious that there should be no needless interference with existing rules which are excellent in every way & which can be valuably worked without the Councillor in charge being ignored by the Lees approaching the Dewan direct as he has done in this & several other cases - I am afraid the Dewan's direct - tour for which I am thankful have not been correctly interpreted by the Lees - H.

8/10/04.

To the Dewan -

My instructions are quite clear - No manual instructions are to be carried out - Other than those conveyed thro' Land Boards & and the Secretary

MGCPB—10,000—19-5-04

General and Revenue Secretariat.

File No. 18 of 1904-05

Serial No.

finds it necessary to make any remarks, these may be communicated through the Chief Secretary

6.1.05

Seen; noted;
To the Dy. Secy
for action &c
9/1/1905

Seen. Office should be
Secy. 11.1.'05

Rec'd 12-1-05

To follow
Received back in the Office on the 7th March 1906.

To be recorded with the proceedings of Sept/Oct

III
Dues
1619

Court

J214

1904.

From

K. P. Puttanna Chetty Esqr
District Magistrate
Kolar District.

To

B. K. Venkatavara Iengar Esqr
Offg: Secy: to the Govt. of
Mysore. Rev & Genl Depts

Dated 25th July 04.

Despatched 25-

Received

General No. 634
No. 48

Enclosure No.

Requesting early orders regarding the investiture of Rao V. R. Thyagaraja Aiyar with 1st Class magisterial powers.

Note
Sl: no. 1 has been returned to the Dt. Magte for submn. to the Chief Court. This paper has therefore been placed in advance of its absence.

Office of the District Magistrate,
Kolar District,
Dated 25th July 1904.

From

K. P. Puttanna Chetty Esqr
District Magistrate
Kolar District.

To

B. K. Venkatavaradiengar Esqr
Offg. Secretary to the Government
of Mysore, Revenue & General Depts.

Sir,

In continuation of this Office No C. 81 of the 18th instant, I have the honor to request the favour of early orders regarding the investiture of Mr Thyagaraja Aiyar, with 1st Class powers. He is in charge of both the Kolar and Malur Divisions, and the magisterial work of these Courts is delayed in consequence of his not being a 1st Class Magistrate.

Magistrate.

I have the honor to be,

Sir,

Your most obedient Servant

W. H. Cummyhett

District Magistrate

Kolar District.

G.R.S. 26]

3

18.4.04.05

File No. ~~21.04.05~~

Serial No. 2.

*Diary No. of letter replied to*_____

No. 273-18-2 Confdl

General and Revenue Secretariat

(Confdl)

, *the* 30/8/ 1904

To

The District Magistrate of the Kolar District.

Date of issue 2/9/04

Signed by Mr. K.S. Chandra Sekhara Aiya

His letter No. C. 81, dated the 6th July, 1904, requesting that Mr. V. A. Jagannatha Iyer, Assistant Commissioner may be invested with the powers of a Magistrate of the 1st Class.

In returning the above for submission through the Chief Secretary has the honor to enquire whether Mr. Jagannatha Iyer ~~has~~ exercised Second class Magisterial powers, and how long he ~~has exercised~~ ~~has~~ Third Class Magisterial powers. ~~exercised by him~~

Revenue 3. 1/9/04

By order

Secretary.

SUBJECT. ~~Appointment~~ Confdl

30-7-04

Seen

1.8.1904

List of enclosures.

Copied by V. Th. K. 1-8-04

Examined by [illegible] 1-8-04

MGCPB—5,000—20-5-04

4

8 A 3

II-1001/68 Jud 1

Bangalore.
12th August 1904.

From

V. A. Raja Ratna Mudr Esq.
Registrar, Chief Court of Mysore.

To B. K. Venkatavaradiengar Esq.
Secretary to Govt; Gl: & Rev: depts

Sir,

I am directed to recommend that Government may be pleased to invest Mr V. R. Jyagaraja Iyer, M. A., Assistant Commissioner and 3d class Magistrate, Malur Division, with the powers of a magistrate of the 1st class.

The District magistrate of Kolar states that though Mr Jyagaraja Iyar did not exercise 2d class powers as he was working in the Secretariat from 1896 till recently, he may be safely entrusted with the powers recommended. The necessity for

an

an additional 1st class magistrate has been stated in the District — magistrate's letter to you (No. C. 81 dated 16th July 1904.)

The usual recommendation roll is enclosed.

I have the honor to be,
Sir,
Your most obedt. Servant;

L. Raja Ratnamud
Registrar.

6

Recommendation roll.

4

Name	Official designation	Pay	Examinations passed.	When appointed Magistrate.	No. and date of Notification investing him with powers.	Powers for which recommended and grounds for recommendation.	Remarks as to efficiency
V. R. Iyagaraja Iyer.	Assistant Commissioner & 3rd class Magistrate Malur Division.	Rs: 450/-	M.A. of the Madras University Impore Civil Service Examination Local Service Rev: Criminal, Civil Parts I + II Kanarese Exam[n].	20.3.1896	Govt: Notification No. 10832/J.1185 D/ 20.3.1896. Directed to take down evidence in the English Language Vide Govt: Notification No. 13321/J.1520 D/ 10.6.96.	Powers of the Magistrate of the 1st class. Grounds for recommendation are stated in the enclosed letter to Govt:.	I consider him fully competant to exercise 1st class powers.

Office of the District Magistrate
Kolar District, Dated 4th August 1904.

W. Nettammuppett
District Magistrate
Kolar District.

Encl.

7

No. General and Revenue Secretariat

~~OFFICE OF THE DEWAN OF MYSORE.~~

Dated Bangalore 23rd August 1904

NOTIFICATION. J 617 C 18-4 23/8/04

Under Section 12 of the Code of Criminal Procedure, Mr. V. R. Iyengaraja Ayer, M.A., Assistant Commissioner, Kolar District, is appointed a Magistrate of the ~~Second~~ First Class ~~and under Section 37, he is invested~~ with the following powers specified in the 4th Schedule as additional powers which Government may confer on a Magistrate of the said Class:—

(1) Power to pass sentences of whipping, Sec. 32.
(2) Power to make orders prohibiting repetitions of nuisances, Sec 143.
(3) Power to make orders under Sec. 144.
(4) Power to hold inquests, Sec. 174.
(5) Power to take cognizance of offences upon complaint, Sec. 191.
(6) Power to take cognizance of offences upon Police Reports, Sec. 191.
(7) Power to take cognizance of offences upon information, Sec 191.
(8) ~~Power to commit for trial, Sec 206.~~

17-8-04.

19.VIII.04

By Order,

26/8/1904

~~Chief~~ *Secretary.*

To

The Compiler, Mysore Gazette, for publication.

~~Copy to the Registrar of the Chief Court.~~ ~~District Magistrate, Kolar, for info.~~

Copy to the ~~Deputy Commissioner~~, Kolar District, with reference to his No. 1201/68 dated the 12th August 1904.

By order,

20.8.1904

Secretary.

No 9/5-18 C.B.-4 dt 28/8/1904

Copd: V.R.R. 22-8-04

Secnd: M.V.-S-d.

16/8/04 16.8.04

ORIGINAL

1904

1904-05

FILE No. 23 OF ~~1903-04.~~

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT

COURTS

DECEMBER

'A' Collection Serial Nos. 1—5.

Refund of half the institution fee in cases in which the defendants admit the claim.

TABLE OF CONTENTS.

Serial No. of File.	Number and date of letter and contents.	References.	Page in A. Progs.
1	To the Registrar of the Chief Court, No. 2182—J., dated the 11th April 1904. Requests the favor of his obtaining the views of the Judges of the Chief Court in the matter.		1
2	From the Registrar, Chief Court, No. 210—19, dated the 12th July 1904. States that the Chief Justice and Justice Mr. A. Rangasamy Iyengar think that the present law as laid down in Section 17A of the Mysore Civil Courts Regulation provides all necessary relief, and that Justice Mr. Nanjundayya while agreeing with the opinion suggests an amendment to the said section.		1
3	To the Registrar of the Chief Court, No. 717 J., dated the 14th September 1904. States that if a defendant admits a claim and the judgment follows, it is difficult not to regard it as a judgment without contest by the agreement of parties, and requests to be informed of the present any practice in the former cases and how any difference in the two sets of cases can be justified.		1
4	From the Registrar of the Chief Court, No. 2920—178, dated the 26th November 1904. States that the present practice in all the Civil Courts is not to grant refund of half the institution fee in cases in which decrees are passed merely on defendants admitting the claim without contest, but that there is nothing in the terms of Section 17 A of the Civil Courts Regulation to prevent an order being passed by a Court for such refund in cases where without contest, the defendant appears and admits the plaintiff's claim, if the Court is satisfied that the parties have come to an agreement and that the Subordinate Courts will be directed to make refunds in cases in question.		1
	To the Registrar of the Chief Court of Mysore, No. J. 1621—C. 23-5, dated the 20th December 1904. Records the above letter.		1
	To the Assistant Secretary in charge of the Representative Assembly Report, Section No. J. 1622—C. 23-5, dated the 20th December 1904. Forwards copy of the above.		

1904-05.

GENERAL AND REVENUE SECRETARIAT.

COURTS.

NOTES.

FILE No. 23.

Refund of half the institution fee in cases in which the defendants admit the claim.

From the Registrar, Chief Court, No. 210-19, dated 12th July 1904. States that the Chief Justice and Justice Mr. A. Rangaswami Iyengar think that the present Law as set forth in Section 17 A of the Civil Courts Regulation provides all necessary relief, and that Justice Mr. Nanjundayya while agreeing with this opinion, suggests the omission of the words "by agreement of parties" in the said Section.

In this office No. 2182—J. of the 15th April 1904, the Registrar was requested the favor of his obtaining the views of the Judges of the Chief Court on the General Subject No. 32 of the Representative Assembly Proceedings of 1903—refund of half the institution fee, where the defendants admit the claim. Section 17 A which contains the rules as to refund of half fee, restricts the refund to cases disposed of *without contest, by agreement of parties.*

T. K. S.
27-7-04.

S. N.
28-7-04.

2. I venture to think that something may also be said in favor of the suggestion made at the last Representative Assembly. Why should a clear admission of the claim, made by the defendant in Court at the earliest opportunity, be treated differently from a mutual agreement of the parties arrived at after the institution of the suit or appeal? The fact that the defendant admits the claim is by itself sufficient to constitute an agreement for all practical purposes. It seems worthy of consideration whether the representation cannot be met by a small amendment of Section 17 A, *viz.*, the substitution of the following for the words "without contest, by agreement of parties":—

"Without contest, either on an agreement of the parties reported to the Court, or on an unqualified admission of the defendant made in Court, before issues are settled or evidence recorded."

3. This amendment does not go as far as that suggested by Mr. Justice Nanjundayya, who would grant a refund even where the defendant does not turn up to admit or deny the claim and the case is thus disposed of *ex-parte*.

K. S. CHANDRASEKHARA AIYAR.
28-7-04.

4. If I am not mistaken, our Section 17 A has no parallel in the British Indian Act. Let me see the papers relating to the circumstances under which it was put in by Regulation II of 1898, Section 3.

C. S.
29-7-04.

5. Please see in particular para 3 of our letter No. 9198—Leg. 48, dated 4th February 1898, to the Resident, which shows that similar provisions are contained in Section 73 of Act XV of 1882 (Presidency Small Cause Court's Act) and in Section 13 of Act VII of 1892 (Madras City Civil Court Act). For ready reference these provisions are quoted below :—

Section 73 of Act XV of 1882 :—

"Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid."

Section 13 of Act VII of 1892 :—

"Whenever any suit or proceeding in the City Court is settled by agreement of the parties before issues have been settled or any evidence recorded, half the amount of the institution fees paid by the plaintiff shall be repaid to him by the Court."

K. S. CHANDRASEKHARA AIYAR.

31-7-04.

6. In Serial Nos. 9 and 12, a refund of half the institution fee was first suggested in cases "compromised out of Court."

7. In Serial Nos. 27 to 29 the then Under-Secretary Mr. H. V. Nanjundayya, went beyond the Small Cause Courts Act and the Madras City Civil Court's Act, and instead of "without contest, by agreement of parties," proposed the words "without contest, *either* by agreement of parties, *default of appearance or otherwise*," his reason for so doing (*vide* Serial No. 30) being expressed in the following words: "I have ventured to make an addition in favor of allowing a refund in *all* cases in which the labour of recording evidence and coming to a decision thereon is saved to the Court."

8. The Chief Court were consulted in regard to the desirability or otherwise of adopting this addition. Mr. Justice Best and Mr. Justice Meenakshya (*vide* Serial No. 36) agreed to the addition while Mr. Justice Ramachendra Iyer opposed it and suggested that the words italicised above, namely, "*either*" and "*default of parties or otherwise*" be omitted for the reason assigned in his Minute. The Government (Serial No. 43) in concurrence with Mr. Ramachendra Iyer deleted the words taken exception to by him; and the draft Regulation was passed accordingly. In sending it up to the Government of India for sanction, it was stated that the provision as passed (with the omission noted above) "would have a wholesome effect in inducing suitors to terminate litigation by mutual agreement. (Note.—These were practically Mr. Ramachendra Iyer's words). Similar provisions, I may add, are contained in Section 73 of Act XV of 1882 (Presidency Small Causes Court Act) and in Section 13 of Act VII of 1892 (Madras City Civil Court's Act)."

9. And now the question is whether a case disposed of "by admission" is a case disposed of "without contest, by agreement of parties"; in other words, whether an agreement in writing is any better mutual adjustment than an admission made in Court at the initial stage of a case. Neither Mr. Ramachendra Iyer's Minute of 1896, with which Government concurred, nor his subsequent Minute with which the present Chief Judge (Mr. Staley) and Mr. Justice Rangaswami Iyengar are now reported to agree, seems directly to touch this question of admission in Court being included in or excluded from the expression "by agreement of parties." A case of "disposal by admission" is not a case of "disposal by default of appearance or otherwise" or of a defendant "not choosing" to contest a claim. It is then entirely a question of construction. In both cases mutual agreement there is, and so too is there a desirability to terminate litigation. The only difference is that instead of presenting a document reporting the arrangement, the defendant makes an admission at the first hearing. That being so, I confess my inability to understand why there should be a refund in the one case and none in the other. To the cases objected to by Mr. Ramachendra Iyer with whom Mr. Staley and Mr. Rangaswami Iyengar agree, I am certainly unwilling to extend the benefit of the exceptional provision under advertence as advocated by Mr. Nanjundayya. My humble opinion is that the present law meets all requirements and that if it does not, all that is required is a slight verbal amendment so as to extend to "admissions" the same privilege as is accorded to "agreements." Before taking further action however, a further communication may be addressed to the Chief Court explaining this view of the matter, and an attempt may also be made to ascertain how the provision in regard to refund which is practically the same both in Mysore and in Madras, is being interpreted and acted upon, in the latter.

C. S.

1-8-04.

10. Submitted to the Dewan Saheb.

B. K. VENKATA VARADA IYENGAR,

2-8-1904.

11. I am disposed to agree with the 1st Councillor. If a defendant admits and a judgment follows, it is difficult not to regard it as a judgment without contest by the agreement of parties. Explain this portion and ask the Chief Court to give information of the practice in such a case and if the refund is not allowed, how the difference in this treatment can be justified.

P. N. K.
30-8-04.

12. Draft accordingly.

B. K. VENKATA VARADA IYENGAR.
1-9-04.

13. Draft submited.

D. M. N.
3-9-04.

N. N.
3-9-04.

14. Passed.

B. K. VENKATA VARADA IYENGAR.
7-9-04.

To the Registrar of the Chief Court of Mysore, No. 717 J., dated the 14th September 1904.

States that if a defendant admits a claim and a judgment follows, it is difficult not to regard it as a judgment without contest by an agreement of parties and requests that the Government may be informed of the present practice in the former cases and how any difference in the two sets of cases can be justified.

From the Registrar of the Chief Court, No. 2920—178, dated the 26th November 1904.

States that the present practice in all the Civil Courts is not to grant refund of half the institution fee in cases in which decrees are passed merely on defendants admitting the claim without contest, but that there is nothing in the terms of Section 17 A of the Civil Courts Regulation to prevent an order being passed by a Court for such refund in cases where without contest the defendant appears and admits the plaintiff's claim, if the Court is satisfied that the parties have come to an agreement and that the Civil Courts will be directed accordingly to make refunds in cases in question.

15. The views now expressed by the Chief Court, and the instructions issued by them to the subordinate Civil Courts, render an amendment of Section 17 A unnecessary for the present The point will, however, be noted in the Legislative Department, in view to the language of that section being revised, so as to include admissions, when next the Civil Courts Regulation comes up for amendment.

16. The correspondence may be recorded with the remark that the Government concur in the view taken by the Chief Court.

17. Draft an order accordingly, quoting the view aforesaid in the body of the order.

K. S. CHANDRASEKHARA AIYAR.
2-12-04.

4. Draft submitted with the circular letter referred to.

T. K. S.
5-12-04.

K. S. CHANDRASEKHARA AIYAR.
6-12-04.

5. Draft submitted to the Dewan Saheb thro' the 1st Councillor.

B. K. VENKATA VARADA IYENGAR.
6-12-04.

6. Draft approved. The matter has been satisfactorily settled.

C. S.
8-12-04.

Draft was approved by Dewan on 10th December 1904.

To the Registrar of the Chief Court of Mysore, No. J. 1621—C. 23-5, dated 20th December 1904.
Records the above letter.

Endorsement to the Assistant Secretary in charge of the Representative Assembly Report Section, No. J. 1622—C. 23-5, dated 20th December 1904.
Forwards copy of the above.

Refund of half the institution fee in cases in which the defendants admit the claim.

FILE No. 23 of 1904-05.

Docket No. 2182—J., to the Registrar, Chief Court, dated Bangalore, 15th April 1904.

General Subject No. 32 of the D. R. A. (1903).

Refund of half of the institution fee may be ordered to be made in cases in which defendants admit the claim. It is difficult to distinguish these cases from the cases which are disposed of by agreement of parties without contest.

With reference to the subject in the margin, has the honor to request that he will be so good as to favor the Government with the opinion of the Judges of the Chief Court, regarding the advisability or otherwise, of granting the request. **Serial No. 1.**

Letter No. 210—19, dated Bangalore, 12th July 1904, from V. A. Rajaratna Mudaliar, Esq., Registrar, Chief Court of Mysore, to B. K. Venkata Varada Iyengar, Esq., Secretary to Government of Mysore, General and Revenue Department.

With reference to your No. 2182—J., dated the 15th April 1904, regarding the question of refund of half fee under Section 17 A of the Mysore Civil Courts Regulation, I am directed to state that the Chief Judge and Mr. Justice Rangaswami Iyengar agree with the opinion already expressed by the late Chief Judge as noted in the margin. They think the present law provides all necessary relief if the parties choose to take advantage of it. **Serial No. 2.**

When the Regulation sanctioned the refund of moiety of institution fees in certain cases, I presume that the intention was to facilitate peaceful adjustment of disputes. I do not see why a present of half the fee should be made to a defendant, who is either too careless or too proud to come to terms with his adversary. If the parties come to terms, why should not the agreement be reported to the Court? The bare fact that a defendant does not choose to contest a claim does not prove an adjustment by agreement. The Regulation serves a good purpose which may be defeated by making an amendment as suggested by the Members.

Mr. Justice Nanjundayya, while agreeing that this opinion is the correct one to give as the section now stands, would suggest that it may with advantage be amended by omitting the words 'by agreement of parties.' He considers that the object of charging only half fees is to encourage parties not to engage in frivolous or vexatious contests and to allow for the very much smaller work thrown on the Courts, and that if this amendment is made, a rider would be necessary to provide for the levy of the portion foregone, if the defendant should subsequently apply to the Court and obtain an order for reopening the case and that this additional expense would very reasonably fall on him in the first instance.

Letter No. 717 J., to the Registrar of the Chief Court of Mysore.

Adverting to your letter No. 210—19, dated the 12th July 1904, regarding the refund of a half of the institution fee in cases in which the defendants admit the claim as prayed for in Subject No. 32 of the Representative Assembly's Proceedings for 1903, I am directed to state that if a defendant admits a claim and a judgment follows, it is difficult not to regard it as a judgment without contest. I am therefore to request the favor of your intimating for the information of the Government the present practice in the cases referred to by the Members of the Representative Assembly, and how any difference in the treatment of the two sets of cases can be justified. **Serial No. 3.**

Letter No. 2920—178, Bangalore, 26th November 1904, from V. A. Rajaratna Mudaliar, Esq., Registrar, Chief Court of Mysore, to B. K. Venkata Varada Iyengar, Esq., Secretary to Government, General and Revenue Department.

Adverting to your letter No. 717—J., dated the 14th September 1904, I am directed to state that the present practice in all the Civil Courts is not to grant refund of half the institution fee in cases in which *decrees are passed* merely on defendants admitting the claim without contest. There is however nothing in the terms of Section 17 A of the Mysore Civil Courts Regulation, II of 1898, to prevent an order being passed by a Court for refund of half the institution fee paid on a plaint where without contest the defendant appears and admits the plaintiff's claim, if the Court thereby be satisfied that the parties have come to an agreement. The claim and the admission without contest are ordinarily sufficient to constitute an agreement of both parties, where the admission of the plaintiff's claim by the defendant is full and unconditional. The Subordinate Civil Courts will be instructed accordingly. **Serial No. 4.**

Order thereon No. J. 1621—C. 23-5, dated 20th December 1904, to the Registrar of the Chief Court.

Recorded. **Serial No. 5.**

Endorsement to the Assistant Secretary in charge of the Representative Assembly Report, Section No. J. 1622—C. 23-5, dated 20th December 1904.

Forwards copy of the above order.